

Notice of Allowability

Application No.

10/674,261

Examiner

Eisa B. Elhilo

Applicant(s)

AU ET AL.

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on March 2, 2005.
2. ☒ The allowed claim(s) is/are 1-18.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Eisa Elhilo
Patent Examiner
Art Unit 1751

6/12/05

DETAILED ACTION

1 This action is responsive to the amendment filed on March 2, 2005.

EXAMINER'S AMENDMENT

2 An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Karen E. Klumas on June 10, 2005.

The application has been amended as follows:

In the specification:

In page 1, in line 8, after "2002" insert, -- and now abandoned --

In the claims:

In claim 10, in line 2, insert -- consisting of-- after the word "group".

3 Claims 1-18 are allowed.

STATEMENT OF REASONS FOR ALLOWANCE

4 The following is an examiner's statement of reasons for allowance:

Although, Casperson et al (US' 146) teaches a method for dyeing hair comprising the step of contacting the hair with a mixture of a two part aqueous composition comprising A) an alkaline aqueous composition comprising 0.2% of at least one primary intermediate (P-phenylenediamine) (see col. 11, Example 1-40), alkalizing agent of ammonia derivatives in the amount of 0.1 to 5% (see col. 5, lines 12-32), 0.0 to 0.2 % of a chelant aminocarboxylic acid of

Art Unit: 1751

ethylenediaminetetraacetic acid (EDTA) (see col. 10, lines 33-35), water as a cosmetically acceptable carrier and composition B) comprising an aqueous developer (oxidizing agent) of hydrogen peroxide in the amount of 3 to 6% (see col. 11, Example 1-40. However, patentee differs from applicant in that Casperson et al, does not teach or suggest a kit or a method for dyeing hair comprising applying to the hair a dyeing composition that comprises from 1 to 5% of a chelant agent as claimed. Further, the obviousness rejection over Casperson, Lapidus and Bugaut has been rendered moot because the comparative data submitted in the Declaration filed March 2, 2005 is sufficient to rebut any prima facie case of obviousness because the comparative data demonstrated that a composition containing 1, 2 or 4 weight percent of chelant (claimed composition) were significantly less damaging to hair (0.021, 0.010 or 0.081 percentage of damage) than a composition comprising 0.0 to 0.2 % of a chelant agent (prior art composition) that resulted in 0.26 and 0.25 percentage of damage. Accordingly, the claimed subject matter as a whole would not have been obvious to one having ordinary skill in the art of hair dyeing formulations.

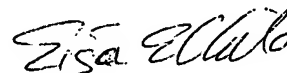
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

Art Unit: 1751

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Patent Examiner
Art Unit 1751

June 12, 2005